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*Attorneys for Plaintiff ARCARE d/b/a  
Parkin Drug Store*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ARCARE d/b/a PARKIN DRUG  
STORE, on behalf of itself and all others  
similarly situated,

Plaintiff,

v.

SUNPACK PHARMACY SUPPLY,  
INC.,

Defendants

Case No. 2:16-cv-2805

**CLASS ACTION COMPLAINT  
AND DEMAND FOR JURY TRIAL**

1. Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4)
2. Violations of the California Junk Fax Law, Cal. Bus. and Prof. Code § 17538.43



1 (\$500) per violation, whichever amount is greater, which may be trebled when the  
2 violation is willing or knowing.

3 6. On behalf of itself and all others similarly situated, Plaintiff brings  
4 this case under the TCPA to recover declaratory relief, damages for violations of  
5 the TCPA, and an injunction prohibiting Defendant from future TCPA violations.

6 **JURISDICTION AND VENUE**

7 7. This Court has personal jurisdiction over Defendant because it  
8 operates its business in Indiana and is an Indiana corporation.

9 8. This Court has subject-matter jurisdiction over Plaintiff's TCPA claim  
10 pursuant to 28 U.S.C. § 1331.

11 9. This Court has supplemental jurisdiction over Plaintiff's California  
12 Junk Fax Law claim pursuant to 28 U.S.C. § 1367(a).

13 10. Venue in this district is proper because this is the district in which  
14 Defendant resides.

15 **PARTIES**

16 11. Plaintiff, ARcare is an Arkansas non-profit corporation located in  
17 Augusta, Arkansas. Among other entities, ARcare owns and operates the Parkin  
18 Drug Store and the Bald Knob Medical Clinic.

19 12. Defendant Sunpack Pharmacy Supply, Inc. is a company that sells  
20 pharmaceutical packaging and storage solutions. It has its principal place of  
21 business at 6079 Rickenbacker Rd, Commerce, California and is organized under  
22 the laws of California.

23 **FACTS**

24 13. On May 12, 2015, Defendant sent an unsolicited advertisement to  
25 Plaintiff's ink-and-paper facsimile machine. The fax advertises pill containers (the  
26 "Product"). It touts "Same Day Shipping!" A copy of this facsimile is attached  
27 hereto and marked as Exhibit A.

28 14. Exhibit A is exemplary of the junk faxes Defendant sends.



1           22. Commonality [Fed. R. Civ. P. 23(a)(2)]. Common questions of law  
2 and fact apply to the claims of all Class Members and include (but are not limited  
3 to) the following:

4           (a) Whether Defendant sent faxes advertising the commercial  
5 availability of property, goods, or services;

6           (b) The manner and method Defendant used to compile or obtain the  
7 list of fax numbers to which it sent Exhibit A and other fax  
8 advertisements;

9           (c) Whether Defendant faxed advertisements without first obtaining  
10 the recipient's prior express permission or invitation;

11           (d) Whether Defendant's advertisements contained the opt-out notice  
12 required by law;

13           (e) Whether Defendant sent the fax advertisements knowingly or  
14 willfully;

15           (f) Whether Defendant violated 47 U.S.C. § 227;

16           (g) Whether the Defendant's violation of the TCPA constituted an  
17 unfair practice in violation of the DCSA, which incorporates the  
18 rules and regulations of the TCPA under Ind. Code § 24-5-0.5-  
19 3(b)(19);

20           (h) Whether Plaintiff and the other Class Members are entitled to  
21 actual and/or statutory damages;

22           (i) Whether the Court should award treble damages; and

23           (j) Whether Plaintiff and the other Class Members are entitled to  
24 declaratory, injunctive, and/or other equitable relief.

25           23. Typicality [Fed. R. Civ. P. 23(a)(3)]. Plaintiff's claims are typical of  
26 the claims of all Class Members. Plaintiff received an unsolicited fax  
27 advertisement from Defendant during the Class Period. Plaintiff makes the same  
28 claims that it makes for the Class Members and seeks the same relief that it seeks

1 for the Class Members. Defendant has acted in the same manner toward Plaintiff  
2 and all Class Members.

3 24. Fair and Adequate Representation [Fed. R. Civ. P. 23(a)(4)]. Plaintiff  
4 will fairly and adequately represent and protect the interests of the Class. It is  
5 interested in this matter, has no conflicts, and has retained experienced class  
6 counsel to represent the Class.

7 25. Predominance and Superiority [Fed. R. Civ. P. 23(b)(3)]. For the  
8 following reasons, common questions of law and fact predominate and a class  
9 action is superior to other methods of adjudication:

10 (a) Proof of Plaintiff's claims will also prove the claims of the Class  
11 without the need for separate or individualized proceedings;

12 (b) Evidence regarding defenses or any exceptions to liability that  
13 Defendant may assert will come from Defendant's records and  
14 will not require individualized or separate inquiries or  
15 proceedings;

16 (c) Defendant has acted and continues to act pursuant to common  
17 policies or practices in the same or similar manner with respect to  
18 all Class Members;

19 (d) The amount likely to be recovered by individual Members of the  
20 Class does not support individual litigation. A class action will  
21 permit a large number of relatively small claims involving  
22 virtually identical facts and legal issues to be resolved efficiently  
23 in one proceeding based on common proofs;

24 (e) This case is inherently well-suited to class treatment in that:

25 (i) Defendant identified persons or entities to receive its fax  
26 transmissions, and it is believed that Defendant's computer  
27 and business records will enable Plaintiff to readily identify  
28 Class Members and establish liability and damages;

- 1 (ii) Common proof can establish Defendant's liability and the  
2 damages owed to Plaintiff and the Class;
- 3 (iii) Statutory damages are provided for in the statutes and are  
4 the same for all Class Members and can be calculated in the  
5 same or a similar manner;
- 6 (iv) A class action will result in an orderly and expeditious  
7 administration of claims, and it will foster economies of  
8 time, effort, and expense;
- 9 (v) A class action will contribute to uniformity of decisions  
10 concerning Defendant's practices; and
- 11 (vi) As a practical matter, the claims of the Class are likely to go  
12 unaddressed absent class certification.

13  
14 **CLAIMS FOR RELIEF**

15 **COUNT I**

16 **Violations of the Telephone Consumer Protection Act**  
17 *47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4)*

18 26. Plaintiff hereby incorporates by reference each of the preceding  
19 paragraphs as though fully set forth herein.

20 27. The TCPA provides strict liability for sending fax advertisements in a  
21 manner that does not comply with the statute. Recipients of fax advertisements  
22 have a private right of action to seek an injunction or damages for violations of the  
23 TCPA and its implementing regulations. 47 U.S.C. § 227(b)(3).

24 28. The TCPA makes it unlawful to send any "unsolicited advertisement"  
25 via fax unless certain conditions are present. 47 U.S.C. § 227(b)(1)(C).  
26 "Unsolicited advertisement" is defined as "any material advertising the commercial  
27 availability or quality of any property, goods, or services which is transmitted to  
28

1 any person without that person's prior express invitation or permission, in writing  
2 or otherwise." 47 U.S.C. § 227(a)(5).

3 29. Unsolicited faxes are illegal if the sender and recipient do not have an  
4 "established business relationship." 47 U.S.C. § 227(b)(1)(C)(i). "Established  
5 business relationship" is defined as "a prior or existing relationship formed by a  
6 voluntary two-way communication between a person or entity and a business or  
7 residential subscriber with or without an exchange of consideration, on the basis of  
8 an inquiry, application, purchase or transaction by the business or residential  
9 subscriber regarding products or services offered by such person or entity, which  
10 relationship has not been previously terminated by either party." 47 U.S.C. §  
11 227(a)(2); 47 C.F.R. § 64.1200(f)(6).

12 30. Regardless of whether the sender and recipient have an established  
13 business relationship, and regardless of whether the fax is unsolicited, a faxed  
14 advertisement is illegal unless it includes an opt-out notice on its first page that  
15 complies with the TCPA's requirements. *See* 47 U.S.C. § 227(b)(1)(C)(iii); 47  
16 C.F.R. § 64.1200(a)(4)(iv). To comply with the law, an opt-out notice must (1)  
17 inform the recipient that the recipient may opt out of receiving future faxes by  
18 contacting the sender; (2) provide both a domestic telephone number and a  
19 facsimile machine number—one of which must be cost-free—that the recipient  
20 may contact to opt out of future faxes; and (3) inform the recipient that the sender's  
21 failure to comply with an opt-out request within thirty days is a violation of law.  
22 *See* 47 U.S.C. § 227(b)(2)(D); 47 CFR § 64.1200(a)(4)(iii).

23 31. Defendant faxed unsolicited advertisements to Plaintiff that did not  
24 have compliant opt-out notices, in violation of 47 U.S.C. § 227(b)(1)(C) and 47  
25 C.F.R. § 64.1200(a)(4).

26 32. Defendant knew or should have known (a) that Plaintiff had not given  
27 express invitation or permission for Defendant to fax advertisements about its  
28



1 products; (b) that Defendant's faxes did not contain a compliant opt-out notice; and  
2 (c) that Exhibit A is an advertisement.

3 33. Defendant's actions caused actual damage to Plaintiff and the Class  
4 Members. Defendant's junk faxes caused Plaintiff and the Class Members to lose  
5 paper, toner, and ink consumed in the printing of Defendant's faxes through  
6 Plaintiff's and the Class Members' fax machines. Defendant's faxes cost Plaintiff  
7 and the Class Members time that otherwise would have been spent on Plaintiff's  
8 and the Class Members' business activities.

9 34. In addition to statutory damages (and the trebling thereof), Plaintiff  
10 and the Class are entitled to declaratory and injunctive relief under the TCPA.

11 **COUNT II**  
12 **Violations of the California Junk Fax Law**  
13 *Cal. Bus. and Prof. Code Section 17538.43*

14 35. Plaintiff hereby incorporates by reference each of the preceding  
15 paragraphs as though fully set forth herein.

16 36. The California Junk Fax Law states that "Unsolicited advertisement  
17 means any material advertising the commercial availability or quality of any  
18 property, goods, or services that is transmitted to any person or entity without that  
19 person's or entity's prior express invitation or permission."

20 37. The California Junk Fax Law provides "it is unlawful for a person or  
21 entity, if either the person or entity or the recipient is located within California, to  
22 use any telephone facsimile machine, computer, or other device to send, or cause  
23 another person or entity to use such a device to send, an unsolicited advertisement  
24 to a telephone facsimile machine."

25 38. The California Junk Fax Law makes unlawful to "(1) initiate any  
26 communication using a telephone facsimile machine that does not clearly mark, in  
27 a margin at the top or bottom of each transmitted page or on the first page of each  
28 transmission, the date and time sent, an identification of the business, other entity,

1 or individual sending the message, and the telephone number of the sending  
2 machine or of the business, other entity, or individual.”

3 39. Remedies for violating the California Junk Fax Law include:

4 a. (A) Injunctive relief against further violations.

5 b. (B) Actual damages or statutory damages of five hundred dollars  
6 (\$500) per violation, whichever amount is greater.

7 c. (C) Both injunctive relief and damages as set forth in  
8 subparagraphs (A) and (B).

9 d. If the court finds that the defendant willfully or knowingly violated  
10 this subdivision, the court may, in its discretion, increase the  
11 amount of the award to an amount equal to not more than three  
12 times the amount otherwise available under subparagraph (B).

13 40. Defendant faxed unsolicited advertisements to Plaintiff in violation of  
14 Cal. Bus. and Prof. Code §17538.43(b)(1).

15 41. Defendant knew or should have known (a) that Plaintiff had not given  
16 express invitation or permission for Defendant to fax advertisements about its  
17 products; (b) that Defendant’s faxes did not contain a compliant opt-out notice; and  
18 (c) that Exhibit A is an advertisement.

19 42. Defendant’s actions caused actual damage to Plaintiff and the Class  
20 Members. Defendant’s junk faxes caused Plaintiff and the Class Members to lose  
21 paper, toner, and ink consumed in the printing of Defendant’s faxes through  
22 Plaintiff’s and the Class Members’ fax machines. Defendant’s faxes cost Plaintiff  
23 and the Class Members time that otherwise would have been spent on Plaintiff’s  
24 and the Class Members’ business activities.

25 43. In addition to statutory damages (and the trebling thereof), Plaintiff  
26 and the Class are entitled to declaratory and injunctive relief under the California  
27 Junk Fax Law.  
28

**REQUEST FOR RELIEF**

WHEREFORE Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that this Court:

a) Determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure;

b) Declare Defendants' conduct to be unlawful under the TCPA and the California Junk Fax Law;

c) Award damages under the TCPA for each violation in the amount of actual monetary loss or \$500, whichever is greater, and treble those damages;

d) Award damages under the California Junk Fax Law for each violation in the amount of actual monetary loss or \$500, whichever amount is greater;

e) Enjoin Defendants from additional violations;

f) Award Plaintiff and the Class their attorney's fees and costs;

g) Grant such other legal and equitable relief as the Court may deem appropriate, including costs and attorney's fees.

**JURY DEMAND**

Plaintiff and the Members of the Class hereby request a trial by jury.

Dated: April 22, 2016

**MILSTEIN ADELMAN JACKSON  
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By: /s/Gillian L. Wade

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